

FILED
2010 FEB 12 PM 3:36
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

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Attorneys for Plaintiff,

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHRISTINE LINDGREN PETERS

Plaintiff,

vs.

LAW OFFICES OF HARRIS & ZIDE

Defendant.

Case No. **10 CV 0355** JLS NLS

**VERIFIED COMPLAINT AND DEMAND
FOR JURY TRIAL**

(Unlawful Debt Collection Practices)

Demand Does Not Exceed \$10,000

COMPLAINT

COMES NOW the Plaintiff, CHRISTINE LINDGREN PETERS ("Plaintiff"), by and through her attorneys, KROHN & MOSS, LTD., and for Plaintiff's Complaint against Defendant, LAW OFFICES OF HARRIS & ZIDE, alleges and affirmatively states as follows:

INTRODUCTION

1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.* (hereinafter "FDCPA"), to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to

1 promote consistent State action to protect consumers against debt collection abuses. (15 U.S.C.
2 1692(a) – (e)).

3 2. The California legislature has determined that the banking and credit system and
4 grantors of credit to consumers are dependent upon the collection of just and owing debts and
5 that unfair or deceptive collection practices undermine the public confidence that is essential to
6 the continued functioning of the banking and credit system and sound extensions of credit to
7 consumers. The Legislature has further determined that there is a need to ensure that debt
8 collectors exercise this responsibility with fairness, honesty and due regard for the debtor's rights
9 and that debt collectors must be prohibited from engaging in unfair or deceptive acts or practices.
10 (Cal. Civ. Code §1788.1(a) – (b)).

11 3. Plaintiff, through Plaintiff's attorneys, brings this action to challenge the actions
12 of the LAW OFFICES OF HARRIS & ZIDE (hereinafter "Defendant") with regard to attempts
13 by Defendant, a debt collector, to unlawfully and abusively collect a debt allegedly owed by
14 Plaintiff, and this conduct caused Plaintiff damages.

15 4. For the purposes of this Petition, unless otherwise indicated, "Defendant"
16 includes all agents, employees, officers, members, directors, heirs, successors, assigns,
17 principals, trustees, sureties, subrogees, representatives and insurers of Defendant named in this
18 caption.

19 **JURISDICTION AND VENUE**

20 5. Jurisdiction of this court arises pursuant to 15 U.S.C. 1692k(d), which states that
21 such actions may be brought and heard before "any appropriate United States district court
22 without regard to the amount in controversy" and 28 U.S.C. 1367 grants this court supplemental
23 jurisdiction over the state claims contained therein.

24 6. Defendant maintains a business office and conducts business in the state of
25 California, and therefore, personal jurisdiction is established.

1 7. Venue is proper pursuant to 28 U.S.C. 1391(b)(2).

2 8. Declaratory relief is available pursuant to 28 U.S.C. 2201 and 2202.

3 **PARTIES**

4 9. Plaintiff is a natural person who resides in San Diego, California and is obligated
5 or allegedly obligated to pay a debt and is a "consumer" as that term is defined by 15 U.S.C.
6 1692a(3).

7 10. Plaintiff is a natural person from whom a debt collector sought to collect a
8 consumer debt which was due and owing or alleged to be due and owing from Plaintiff and is a
9 "debtor" as that term is defined by California Civil Code § 1788.2(h).

10 11. Plaintiff is informed and believes, and thereon alleges, that Defendant is a law
11 firm located in Pasadena, California.

12 12. Plaintiff is informed and believes, and thereon alleges, that Defendant uses
13 instrumentalities of interstate commerce or the mails in any business the principal purpose of
14 which is the collection of any debts, or who regularly collects or attempts to collect, directly or
15 indirectly, debts owed or due or asserted to be owed or due another and is a "debt collector" as
16 that term is defined by 15 U.S.C. § 1692a(6).

17 13. Plaintiff is informed and believes, and thereon alleges, that Defendant is a "debt
18 collector" as that term is defined by California Civil Code § 1788.2(c).

19 **FACTUAL ALLEGATIONS**

20 14. Defendant constantly and continuously placed collection calls to Plaintiff seeking
21 and demanding payment for an alleged debt.

22 15. Defendant talked to Plaintiff in an abusive and harassing manner.

23 16. Defendant threatened to file a lawsuit against Plaintiff if Plaintiff did not pay the
24 alleged debt, even though Defendant does not intend to do so and cannot legally
25 do so, as the statute of limitations has elapsed.

COUNT I

**DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT,
(FDCPA), 15 U.S.C. § 1692 et seq.**

17. Plaintiff repeats, re-alleges and incorporates by reference all of the foregoing paragraphs.
18. Defendant violated the FDCPA based on the following:
- a. Defendant Violated §1692(d) of the FDCPA by engaging in conduct the natural consequence of which is to harass, oppress, and abuse Plaintiff.
 - b. Defendant Violated §1692(d)(2) of the FDCPA by using language the natural consequence of which is to harass, oppress, and abuse Plaintiff.
 - c. Defendant Violated §1692d(5) of the FDCPA by causing a telephone to ring and engaging Plaintiff repeatedly and continuously with the intent to annoy, abuse, and harass.
 - d. Defendant violated §1692e(5) of the FDCPA by threatening to file a lawsuit against Plaintiff when Defendant did not intend to take such action and cannot legally take such action because the statute of limitations has expired.
 - e. Defendant violated §1692e(10) of the FDCPA by using deceptive means in an attempt to collect a debt by threatening to file a lawsuit against Plaintiff when Defendant did not intend to take such action and cannot legally take such action because the statute of limitations has expired.

COUNT II

**DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT COLLECTION
PRACTICES ACT (RFDCPA), Cal. Civ. Code § 1788 et seq.**

19. Plaintiff repeats, re-alleges and incorporates by reference all of the foregoing

paragraphs.

20. Defendant violated the RFDCPA based on the following:

a. Defendant violated §1788.11(d) of the RFDCPA by placing collection calls to Plaintiff repeatedly and continuously so as to annoy Plaintiff.

b. Defendant violated §1788.11(e) of the RFDCPA by placing collection calls to Plaintiff with such frequency as to be unreasonable and to constitute harassment to Plaintiff under the circumstances.

c. Defendant violated §1788.13(j) of the RFDCPA by threatening to file a lawsuit against Plaintiff if Plaintiff did not pay the alleged debt when Defendant did not intend to take such action and cannot legally take such action because the statute of limitations has expired.

d. Defendant violated the §1788.17 of the RFDCPA by continuously failing to comply with the statutory regulations contained within the FDCPA, 15 U.S.C. § 1692 et seq.

21. As a consequence of Defendant's foregoing actions, Plaintiff has suffered from emotional distress (See Exhibit "A").

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

22. Declaratory judgment that the Defendant's conduct violated the State Act, RFDCPA, and Federal Act, FDCPA.

23. Actual damages.

24. Statutory damages pursuant to the State Act, Cal. Civ. Code § 1788.30(b).

25. Statutory damages pursuant to the Federal Act, 15 U.S.C. 1692k.

26. Costs and reasonable attorney's fees pursuant to the State Act, Cal. Civ Code § 1788.30(c) and the Federal Act, 15 U.S.C. 1692k.

1 27. Any other relief that this court deems to be just and proper.

2 RESPECTFULLY SUBMITTED,

3 DATED: February 12, 2010

KROHN & MOSS, LTD.

4
5 By: 

6 G. Thomas Martin, III
7 Attorney for Plaintiff

8 **DEMAND FOR JURY TRIAL**

9 PLEASE TAKE NOTICE that Plaintiff, , hereby demands trial by jury in this action.
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4 **VERIFICATION OF COMPLAINT AND CERTIFICATION**
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6 **STATE OF CALIFORNIA**

7 Plaintiff, CHRISITINE LINDGREN PETERS, says as follows:

- 8
9 1. I am the Plaintiff in this civil proceeding.
10 2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe
11 that all of the facts contained in it are true, to the best of my knowledge, information
12 and belief formed after reasonable inquiry.
13 3. I believe that this civil Complaint is well grounded in fact and warranted by existing
14 law or by a good faith argument for the extension, modification or reversal of existing
15 law.
16 4. I believe that this civil Complaint is not interposed for any improper purpose, such as
17 to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a
18 needless increase in the cost of litigation to any Defendant(s), named in the
19 Complaint.
20 5. I have filed this Complaint in good faith and solely for the purposes set forth in it.
21 6. Each and every exhibit I have provided to my attorneys which has been attached to
22 this Complaint is a true and correct copy of the original.
23 7. Except for clearly indicated redactions made by my attorneys where appropriate, I
24 have not altered, changed, modified or fabricated these exhibits, except that some of
25 the attached exhibits may contain some of my own handwritten notations.

18 Pursuant to 28 U.S.C. § 1746(2), I, CHRISITINE LINDGREN PETERS, hereby declare
19 (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.
20

21 DATED: 1-31-2010 
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CHRISITINE LINDGREN PETERS, PLAINTIFF

CIVIL COVER SHEET

JS 44 (Rev. 12/07)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

CHRISTINE LINDGREN PETERS

(b) County of Residence of First Listed Plaintiff San Diego (CA)

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Krohn & Moss, Ltd. Ryan Lee (323) 988-2400
10474 Santa Monica Blvd., Suite 401 Los Angeles, CA 90025

DEFENDANTS

LAW OFFICES OF HARRIS & ZIDE

County of Residence of First Listed Defendant

Los Angeles (CA)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

10 CV 0355

JLS NLS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws		<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 R.R. & Truck		<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs.		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health		<input checked="" type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 690 Other		<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury				<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract					<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability					<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise					<input type="checkbox"/> 890 Other Statutory Actions
					<input type="checkbox"/> 891 Agricultural Acts
					<input type="checkbox"/> 892 Economic Stabilization Act
					<input type="checkbox"/> 893 Environmental Matters
					<input type="checkbox"/> 894 Energy Allocation Act
					<input type="checkbox"/> 895 Freedom of Information Act
					<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
					<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 USC 1692 et seq.

Brief description of cause:

Unlawful and abusive debt collection practices

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

/s/G. Thomas Martin, III

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

WB 02.12-10

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS010194
Cashier ID: mbain
Transaction Date: 02/12/2010
Payer Name: KROHN AND MOSS

CIVIL FILING FEE
For: PETERS V HARRIS AND ZIDE
Case/Party: D-CAS-3-10-CV-000355-001
Amount: \$350.00

CHECK
Check/Money Order Num: 20904
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.